

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION

IN RE:	§	
	§	
MICHAEL SHAWN SMITH,	§	CASE NO. 00-50013-7
	§	
	§	
DEBTOR.	§	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Findings of Fact**

1. The Debtor, Michael Shawn Smith (Smith), filed his voluntary petition under Chapter 7 of the Bankruptcy Code on January 6, 2000. On the same date, Smith filed his schedules and statement of financial affairs. Max Tarbox was appointed trustee in the case.

2. Schedule A - Real Property, reflects Smith's ownership of the following:

undivided 1/6 interest in the Southwest Quarter of Section 15, Block A, L&S.V. Ry. Co. Original Grantee, and 85.75 acres out of Section 2, Block A-5, Ctf. No. SF-8781, W.E. Armstrong Original Grantee, . . . Lamb County, Texas.

The above property will be referred to as the "Lamb County Property".

3. In Schedule C - Property Claimed as Exempt, Smith elected the federal exemptions under § 522(d) of the Bankruptcy Code. He did not claim the Lamb County Property as exempt property.

4. On March 22, 2000, Smith's father died resulting in Smith inheriting the following described real property:

an undivided 1/3 interest in 112.25 acres out of Southeast part of Survey 3, Block C, Abs. No. 246, Cert. No. 141, Original Grantee I&GN RR Co., in Floyd County, Texas, and being all that part of said Survey No. 3 SE of right-of-way of Ft. Worth and Denver South Plains Railway, together with all fixtures and improvements situated thereon and being the land conveyed by Marvin Shubert and Mildred Shubert to L.D. Smith, Jr. by deed dated March 11, 1961, recorded in Book 157, page 148, Deed Records, Floyd County, Texas; and

an undivided 1/3 interest in 201.7 acres out of the North part of West 1/2 of Section 4, Block C, Floyd County, Texas.

The above two properties will be referred to as the “Floyd County Property”.<sup>1</sup>

5. On April 19, 2000, Smith filed Amended Schedule A - Real Property and Amended Schedule C - Property Claimed as Exempt. The Amended Schedule A includes the Floyd County Property.

6. By the Amended Schedule C, Smith switched to the state exemptions under the Texas Property Code and claimed as exempt both his interest in the Lamb County Property and his interest in the Floyd County Property.

7. On May 17, 2000, the Trustee objected to Smith’s homestead claim as to both the Lamb County Property and the Floyd County Property, asserting that Smith’s claim as to both is valid only to the extent he can assert a legitimate homestead claim to the Floyd County Property. The Trustee challenges the claim to the Floyd County Property because Smith disclaimed the Floyd County Property as homestead in a deed of trust issued in favor of First National Bank of Floydada to secure a loan made by the bank to LDS Cattle Co., Inc. Moreover, the Trustee contends Smith’s use of the Floyd County Property will not support a homestead claim. Smith refutes the Trustee, asserting that he actually resides on the Floyd County Property, that he is presently farming the property, and that he intends to continue farming and to reside on the Floyd County Property. Smith argues that his homestead claim to the Floyd County Property is proper and therefore he is also allowed the Lamb County Property in order to obtain the full benefit of his rural homestead rights.<sup>2</sup>

8. Smith acquired the Lamb County Property by inheritance in February, 1999, upon the death of his grandmother.

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<sup>1</sup>While the evidence is somewhat unclear, it appears Smith had previously inherited an interest in the Floyd County Property, subject to a life estate in favor of his father, upon his mother’s death, which predates the death of his father.

<sup>2</sup>At trial, the Trustee advised the court that he does not dispute the Debtor’s right to claim a two hundred acre rural homestead or his right to claim both the Lamb County Property and Floyd County Property as homestead despite such properties being located in two counties approximately fifty miles apart.

9. Smith previously farmed the Lamb County Property under a lease arrangement with his grandmother, but ceased farming shortly before her death.<sup>3</sup> The Lamb County Property is presently under lease to Chris DeBerry. This lease runs through 2000.

10. Smith has lived on the Floyd County Property since January, 1999, in a double-wide trailer apparently owned by his brother and nephews.

11. Smith works as a hired hand for his brother or entities controlled or owned by his brother.<sup>4</sup> He works on the Floyd County Property and on other farms leased by his brother's companies.

12. According to the amended schedules, there is no equity in the Floyd County Property.<sup>5</sup>

13. The Floyd County Property was pledged to First National Bank of Floydada under a deed of trust dated "effective" November 15, 1999. The deed of trust purports to secure a promissory note in the amount of \$400,000.00, under which LDS Cattle Co., Inc. is the maker. The maturity date of the note is May 15, 2001. The grantors under the deed of trust are L. D. Smith, Jr., Michael Earl Smith, Michael Shawn Smith, and Tynette Smith DeSino.

14. Paragraph 20 of the deed of trust states as follows:

All real estate constituting Grantor's homestead exempt from forced sale under the Texas Constitution or other laws consists of the property other than the herein secured property and Grantor's disclaim all right to the secured property as homestead.

15. The deed of trust reflects that a prior encumbrance against the property is a legal life estate devised to L. D. Smith, Jr. in the will of Wanda F. Smith, deceased.

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<sup>3</sup>The evidence reflects that Smith actually quit farming the Lamb County Property in October or November, 1998.

<sup>4</sup>The evidence reflects that Smith is actually paid by Smith Brothers Farms, a partnership, and that he also performs work for LDS Cattle Co., Inc., both of which entities are owned or controlled by Smith's brother.

<sup>5</sup>At trial, the Trustee advised the court that he was of the opinion that the lien in favor of First National Bank of Floydada may be avoided as a preference.

16. Smith credibly testified that had he obtained financing for 1999, he would have continued to farm the Lamb County Property.

17. As Smith has farmed in the past and is still farming, though as a hired hand, the court finds that Smith intends to farm in the future.

18. If appropriate, these findings of fact shall be considered conclusions of law.

### **Conclusions of Law**

1. This court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding. 28 U.S.C. § 157(b).

2. As a debtor under the Bankruptcy Code, Smith may elect exemptions under either state or federal law. *See* 11 U.S.C. § 522(b).

3. Smith first claimed exemptions under federal law but, after inheriting the Floyd County Property, amended his exemptions to claim state law exemptions and thereby claim as exempt his interest in both the Floyd County Property and the Lamb County Property.

4. The Floyd County Property became property of the bankruptcy estate upon Smith's inheritance of the property by virtue of his father's death on March 22, 2000.<sup>6</sup> 11 U.S.C. § 541(a)(5). Smith is therefore entitled to claim the Floyd County Property as exempt property. *See* § 522(b) ("debtor may exempt from property of the estate ...") (emphasis added); *see also In re Magness*, 160 B.R. 294 (Bankr. N.D. Tex. 1993).

5. A rural homestead in Texas may, for a family, consist of not more than two hundred acres, which may be in one or more parcels, with the improvements thereon. Tex. Const. art. XVI, § 51; Tex. Prop. Code Ann. § 41.002(b) (Vernon 1999).

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<sup>6</sup>Or at least that portion of the Floyd County Property that passed to Smith upon his father's death. *See* note 1 *supra*.

6. Smith's homestead claim falls within the acreage limitation for a family asserting a rural homestead claim.<sup>7</sup>

7. Under Texas law, a claimant may establish homestead rights in his land by showing both overt acts of homestead usage and intention on the part of the owner to claim the land as homestead. *In the Matter of Kennard*, 970 F.2d 1455 (5<sup>th</sup> Cir. 1992). While Smith has the burden to establish the homestead character of the property he claims as homestead, this initial burden of proof is a short hurdle, and mere evidence of overt acts of homestead usage is usually sufficient to establish the homestead. *In re Bradley*, 960 F.2d 502 (5<sup>th</sup> Cir. 1992). As long as Smith can demonstrate that he has used the property for homestead purposes, the law presumes that Smith possesses the requisite intent. *Id.*

8. As Smith farmed the Lamb County Property for several years prior to his grandmother's death and presently works as a hired hand on the Floyd County Property and on other farms, the court concludes that Smith intends to farm both the Floyd County Property and the Lamb County Property in the future.

9. By residing on the Floyd County Property and assisting in the farming operations thereon, Smith has demonstrated overt acts of homestead usage sufficient to establish homestead rights to the Floyd County Property. *Kennard*, 970 F.2d 1455 (actual use of the land as homestead is the most satisfactory and convincing evidence of intention); *In re Niland*, 825 F.2d 801 (5<sup>th</sup> Cir. 1987) (evidence that debtor and his wife moved onto the property with the intention of using the property as

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<sup>7</sup>As the Trustee has conceded that Smith is entitled to claim up to a full two hundred acre rural homestead, the court does not address the potential issue of whether he is restricted to no more than a one hundred acre homestead as a single adult. *See* note 2 *supra*.

their home was sufficient to enable debtor to meet his burden of establishing initial homestead character of property).

10. To realize the full benefit of his homestead rights, Smith is entitled to extend his homestead claim to the Lamb County Property. *In re Bradley*, at 508 (evidence that debtor uses farms for homestead purposes obviates consideration that debtor does not intend to claim all of it as homestead).<sup>8</sup>

11. Although Smith does not own the trailer in which he lives, his homestead right is not conditioned upon his ownership of the mobile home.

12. The disclaimer in the deed of trust does not defeat Smith's homestead claim as against the Trustee.<sup>9</sup>

13. The disclaimer does not prevent Smith from asserting a homestead claim to the Floyd County Property after inheriting the property from his father.

14. In light of the foregoing findings and conclusions, and, further, given the liberal construction to be accorded homestead claims, *In re Mitchell*, 132 B.R. 553 (Bankr. W.D. Tex. 1991), the court denies the Trustee's objection to Smith's claim of exemption.

15. If appropriate, these conclusions of law shall be findings of fact.

Signed July 31, 2000.

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<sup>8</sup>Moreover, the Trustee does not challenge Smith's homestead claim to the Lamb County Property if Smith's claim to the Floyd County Property is sustained. *See* note 2 *supra*.

<sup>9</sup>The court notes that the Fifth Circuit has held that "a homestead disclaimer cannot change the character of a true homestead under Texas law; as long as the claimant has occupied the property in question and used it for homestead purposes, then attempted homestead disclaimer will not preclude her from claiming the exemption." *In re Bradley*, 960 F.2d 502, 509 (5<sup>th</sup> Cir. 1992). Additionally, it was held in *In re Julian*, 163 B.R. 478 (Bankr. N.D. Tex. 1994) that a disclaimer in a deed of trust was not binding upon the debtor where debtor openly and continuously lived on and used the disclaimed property as his residential and business homestead. It should be noted, however, that the court is not addressing whether the disclaimer is valid as between Smith and the First National Bank of Floydada.

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Robert L. Jones  
UNITED STATES BANKRUPTCY JUDGE